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I N S E N A T E

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AN ACT to amend the racing, pari-mutuel wagering and breeding law and the penal law, in relation to allowing certain interactive poker games

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The racing, pari-mutuel wagering and breeding law is  
2 amended by adding a new article 14 to read as follows:

3 ARTICLE 14

4 INTERACTIVE GAMING

5 SECTION 1400. LEGISLATIVE FINDINGS AND PURPOSE.

6 1401. DEFINITIONS.

7 1402. AUTHORIZATION.

8 1403. REQUIRED SAFEGUARDS/MINIMUM STANDARDS.

9 1404. SCOPE OF LICENSING REVIEW.

10 1405. STATE TAX.

11 S 1400. LEGISLATIVE FINDINGS AND PURPOSE. THE LEGISLATURE HEREBY FINDS  
12 AND DECLARES THAT: 1. UNDER THE NEW YORK PENAL LAW A PERSON ENGAGES IN  
13 GAMBLING WHEN HE OR SHE STAKES OR RISKS SOMETHING OF VALUE UPON THE  
14 OUTCOME OF A CONTEST OF CHANCE OR A FUTURE CONTINGENT EVENT NOT UNDER

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 HIS OR HER CONTROL OR INFLUENCE, UPON AN AGREEMENT OR UNDERSTANDING THAT  
2 HE OR SHE WILL RECEIVE SOMETHING OF VALUE IN THE EVENT OF A CERTAIN  
3 OUTCOME.

4 2. A CONTEST OF CHANCE IS DEFINED AS ANY CONTEST, GAME, GAMING SCHEME  
5 OR GAMING DEVICE IN WHICH THE OUTCOME DEPENDS IN A MATERIAL DEGREE UPON  
6 AN ELEMENT OF CHANCE, NOTWITHSTANDING THAT SKILL OF THE CONTESTANTS MAY  
7 ALSO BE A FACTOR THEREIN. (SUBDIVISION 1 OF SECTION 225.00 OF THE PENAL  
8 LAW). THUS, GAMES OF CHANCE MAY INVOLVE SOME SKILL, BUT IN THOSE GAMES  
9 THE LEVEL OF SKILL DOES NOT DETERMINE THE OUTCOME REGARDLESS OF THE  
10 DEGREE OF SKILL EMPLOYED. SEE PEOPLE V. TURNER, 165 MISC. 2D 222, 224,  
11 629 N.Y.S.2D 661, 662 (CRIM. CT. 1995). ON THE OTHER HAND, WHERE A  
12 CONTEST PITS THE SKILL LEVELS OF THE PLAYERS AGAINST EACH OTHER, NEW  
13 YORK COURTS HAVE FOUND A GAME TO BE ONE OF SKILL RATHER THAN CHANCE. SEE  
14 PEOPLE V. HUNT, 162 MISC. 2D 70, 72, 616 N.Y.S.2D 168, 170 (CRIM. CT.  
15 1994) ("PLAYED FAIRLY, SKILL RATHER THAN CHANCE IS THE MATERIAL COMPO-  
16 NENT OF THREE-CARD MONTE.");

17 3. POKER IN MANY INSTANCES HAS BEEN DEFINED AS A GAME OF SKILL AND A  
18 NEW YORK FEDERAL COURT IN U.S. V. DICRISTINA, 886 F. SUPP. 2D 164, 224,  
19 ASSESSED THAT UNDER FEDERAL LAW POKER WAS PREDOMINANTLY A GAME OF SKILL;

20 4. NEW YORK COURTS HAVE INTERPRETED NEW YORK LAW TO APPLY A MORE  
21 RIGOROUS TEST IN IDENTIFYING A "CONTEST OF CHANCE" THAN IS APPLIED BY  
22 MOST STATES IN THIS NATION AND THE COURTS HAVE FOUND THAT WHERE A  
23 CONTEST PITS THE SKILL LEVELS OF THE PLAYERS AGAINST EACH OTHER, THOSE  
24 GAMES ARE GAMES OF SKILL AND NOT GAMES OF CHANCE. FURTHERMORE, THE  
25 COURTS HAVE NOT LIMITED THE LEGISLATURE'S ABILITY TO DETERMINE THAT  
26 CERTAIN FORMS OF POKER SHOULD FALL OUTSIDE THE GENERAL DEFINITION OF  
27 GAMBLING SINCE THOSE GAMES ARE GAMES OF SKILL;

28 5. TEXAS HOLD'EM POKER INVOLVES TWO CARDS DEALT FACE DOWN TO EACH  
29 PLAYER AND THEN FIVE COMMUNITY CARDS PLACED FACE-UP BY THE DEALER, A  
30 SERIES OF THREE, THEN TWO ADDITIONAL SINGLE CARDS, WITH PLAYERS DETER-  
31 MINING WHETHER TO CHECK, BET, RAISE OR FOLD AFTER EACH DEAL. OMAHA  
32 HOLD'EM POKER IS A SIMILAR GAME, IN WHICH EACH PLAYER IS DEALT FOUR  
33 CARDS AND MAKES HIS OR HER BEST HAND USING EXACTLY TWO OF THEM, PLUS  
34 EXACTLY THREE OF THE FIVE COMMUNITY CARDS. THESE GAMES ARE CONSIDERED TO  
35 BE COMPLEX FORMS OF POKER WHICH INVOLVE PLAYER STRATEGY AND  
36 DECISION-MAKING AND WHICH PIT THE SKILL LEVELS OF THE PLAYERS AGAINST  
37 EACH OTHER. AS GAMES OF SKILL, THESE FORMS OF POKER DO NOT FALL UNDER  
38 THE DEFINITION OF GAMBLING AS PROHIBITED BY THE PENAL LAW; AND

39 6. THE LEGISLATURE FURTHER FINDS THAT AS THE INTERNET HAS BECOME AN  
40 INTEGRAL PART OF SOCIETY, AND INTERNET POKER A MAJOR FORM OF ENTER-  
41 TAINMENT FOR MANY CONSUMERS, ANY INTERACTIVE GAMING ENFORCEMENT AND  
42 REGULATORY STRUCTURE MUST BEGIN FROM THE BEDROCK PREMISE THAT PARTIC-  
43 IPATION IN A LAWFUL AND LICENSED GAMING INDUSTRY IS A PRIVILEGE AND NOT  
44 A RIGHT, AND THAT REGULATORY OVERSIGHT IS INTENDED TO SAFEGUARD THE  
45 INTEGRITY OF THE GAMES AND PARTICIPANTS AND TO ENSURE ACCOUNTABILITY AND  
46 THE PUBLIC TRUST.

47 S 1401. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS  
48 SHALL HAVE THE FOLLOWING MEANINGS:

49 1. "AUTHORIZED GAME" MEANS OMAHA HOLD'EM AND TEXAS HOLD'EM POKER, AS  
50 WELL AS ANY OTHER POKER GAME THAT THE COMMISSION DETERMINES IS THE MATE-  
51 RIAL EQUIVALENT OF EITHER OF THOSE, WHETHER IN A CASH GAME OR TOURNA-  
52 MENT.

53 2. "AUTHORIZED PARTICIPANTS" MEANS PERSONS WHO ARE EITHER PHYSICALLY  
54 PRESENT IN THIS STATE WHEN PLACING A WAGER OR WHO OTHERWISE ARE PERMIT-  
55 TED BY APPLICABLE LAW, AS DETERMINED BY THE COMMISSION, TO PLACE A  
56 WAGER. THE INTERMEDIATE ROUTING OF ELECTRONIC DATA IN CONNECTION WITH

1 INTERACTIVE GAMING SHALL NOT DETERMINE THE LOCATION OR LOCATIONS IN  
2 WHICH A WAGER IS INITIATED, RECEIVED OR OTHERWISE MADE.

3 3. "CORE FUNCTION" MEANS ANY OF THE FOLLOWING: (A) THE MANAGEMENT,  
4 ADMINISTRATION OR CONTROL OF WAGERS ON INTERACTIVE GAMING; (B) THE  
5 MANAGEMENT, ADMINISTRATION OR CONTROL OF THE GAMES WITH WHICH THOSE  
6 WAGERS ARE ASSOCIATED; OR (C) THE DEVELOPMENT, MAINTENANCE, PROVISION OR  
7 OPERATION OF AN INTERACTIVE GAMING PLATFORM.

8 4. "COMMISSION" MEANS THE NEW YORK STATE GAMING COMMISSION.

9 5. "DIVISION" MEANS THE DIVISION OF GAMING, ESTABLISHED UNDER PARA-  
10 GRAPH (C) OF SUBDIVISION TWO OF SECTION ONE HUNDRED THREE OF THIS CHAP-  
11 TER.

12 6. "INTERACTIVE GAMING" MEANS THE CONDUCT OF GAMES THROUGH THE USE OF  
13 THE INTERNET OR OTHER COMMUNICATIONS TECHNOLOGY THAT ALLOWS A PERSON,  
14 UTILIZING MONEY, CHECKS, ELECTRONIC CHECKS, ELECTRONIC TRANSFERS OF  
15 MONEY, CREDIT CARDS, DEBIT CARDS OR ANY OTHER INSTRUMENTALITY, TO TRANS-  
16 MIT TO A COMPUTER INFORMATION TO ASSIST IN THE PLACING OF A WAGER AND  
17 CORRESPONDING INFORMATION RELATED TO THE DISPLAY OF THE GAME, GAME  
18 OUTCOMES OR OTHER SIMILAR INFORMATION. THE TERM DOES NOT INCLUDE THE  
19 CONDUCT OF (A) NON-GAMBLING GAMES THAT DO NOT OTHERWISE REQUIRE A  
20 LICENSE UNDER STATE OR FEDERAL LAW; OR (B) GAMES THAT OCCUR ENTIRELY  
21 AMONG PARTICIPANTS WHO ARE LOCATED ON A LICENSED CASINO PREMISES. FOR  
22 PURPOSES OF THIS PROVISION, "COMMUNICATIONS TECHNOLOGY" MEANS ANY METHOD  
23 USED AND THE COMPONENTS EMPLOYED BY AN ESTABLISHMENT TO FACILITATE THE  
24 TRANSMISSION OF INFORMATION, INCLUDING, WITHOUT LIMITATION, TRANSMISSION  
25 AND RECEPTION BY SYSTEMS BASED ON WIRE, CABLE, RADIO, MICROWAVE, LIGHT,  
26 OPTICS OR COMPUTER DATA NETWORKS, INCLUDING, WITHOUT LIMITATION, THE  
27 INTERNET AND INTRANETS.

28 7. "INTERACTIVE GAMING GROSS REVENUE" MEANS THE TOTAL OF ALL SUMS PAID  
29 TO A LICENSEE FROM INTERACTIVE GAMING INVOLVING AUTHORIZED PARTICIPANTS,  
30 LESS ONLY THE TOTAL OF ALL SUMS PAID OUT AS WINNINGS TO PATRONS AND  
31 PROMOTIONAL GAMING CREDITS; PROVIDED, HOWEVER, THAT THE CASH EQUIVALENT  
32 VALUE OF ANY MERCHANDISE OR OTHER NON-CASH THING OF VALUE INCLUDED IN A  
33 CONTEST OR TOURNAMENT SHALL NOT BE INCLUDED IN THE TOTAL OF ALL SUMS  
34 PAID OUT AS WINNINGS TO PLAYERS FOR PURPOSES OF DETERMINING INTERACTIVE  
35 GAMING GROSS REVENUE.

36 (A) NEITHER AMOUNTS DEPOSITED WITH A LICENSEE FOR PURPOSES OF INTERAC-  
37 TIVE GAMING NOR AMOUNTS TAKEN IN FRAUDULENT ACTS PERPETRATED AGAINST A  
38 LICENSEE FOR WHICH THE LICENSEE IS NOT REIMBURSED SHALL BE CONSIDERED TO  
39 HAVE BEEN "PAID" TO THE LICENSEE FOR PURPOSES OF CALCULATING INTERACTIVE  
40 GAMING GROSS REVENUE.

41 (B) "PROMOTIONAL GAMING CREDIT" INCLUDES BONUSES, PROMOTIONS AND ANY  
42 AMOUNT RECEIVED BY A LICENSEE FROM A PATRON FOR WHICH THE LICENSEE CAN  
43 DEMONSTRATE THAT IT OR ITS AFFILIATE HAS NOT RECEIVED CASH.

44 8. "INTERACTIVE GAMING PLATFORM" MEANS THE COMBINATION OF HARDWARE,  
45 SOFTWARE AND DATA NETWORKS USED TO MANAGE, ADMINISTER OR CONTROL WAGERS  
46 ON INTERACTIVE GAMING OR THE GAMES WITH WHICH THOSE WAGERS ARE ASSOCI-  
47 ATED.

48 9. "INTERNET" MEANS A COMPUTER NETWORK OF INTEROPERABLE  
49 PACKET-SWITCHED DATA NETWORKS.

50 10. "LICENSEE" MEANS A PERSON WHO IS LICENSED BY THE COMMISSION TO  
51 OFFER INTERACTIVE GAMING, USING AN INTERACTIVE GAMING PLATFORM TO  
52 AUTHORIZED PARTICIPANTS. A LICENSEE MAY UTILIZE MULTIPLE INTERACTIVE  
53 GAMING PLATFORMS PROVIDED THAT EACH PLATFORM IS APPROVED BY THE COMMIS-  
54 SION.

55 11. "OMAHA HOLD'EM POKER" MEANS THE POKER GAME MARKETED AS OMAHA  
56 HOLD'EM POKER OR OMAHA POKER IN WHICH EACH PLAYER IS DEALT FOUR CARDS

1 AND MUST MAKE HIS OR HER BEST HAND USING EXACTLY TWO OF THEM, PLUS  
2 EXACTLY THREE OF THE FIVE COMMUNITY CARDS.

3 12. "SIGNIFICANT VENDOR" MEANS ANY PERSON WHO OFFERS OR WHO PROPOSES  
4 TO OFFER ANY OF THE FOLLOWING SERVICES WITH RESPECT TO INTERACTIVE  
5 GAMING: (A) A CORE FUNCTION; (B) SALE, LICENSING OR OTHER RECEIPT OF  
6 COMPENSATION FOR SELLING OR LICENSING A DATABASE OR CUSTOMER LIST OF  
7 INDIVIDUALS RESIDING IN THE UNITED STATES SELECTED IN WHOLE OR IN PART  
8 BECAUSE THEY PLACED WAGERS OR PARTICIPATED IN GAMBLING GAMES WITH OR  
9 THROUGH AN INTERNET WEBSITE OR OPERATOR (OR ANY DERIVATIVE OF SUCH A  
10 DATABASE OR CUSTOMER LIST); (C) PROVISION OF ANY TRADEMARK, TRADENAME,  
11 SERVICE MARK OR SIMILAR INTELLECTUAL PROPERTY UNDER WHICH A LICENSEE OR  
12 SIGNIFICANT VENDOR IDENTIFIES INTERACTIVE GAMES TO CUSTOMERS; OR (D)  
13 PROVISION OF ANY PRODUCT, SERVICE OR ASSET TO A LICENSEE OR SIGNIFICANT  
14 VENDOR IN RETURN FOR A PERCENTAGE OF INTERACTIVE GAMING REVENUE (NOT  
15 INCLUDING FEES TO FINANCIAL INSTITUTIONS AND PAYMENT PROVIDERS FOR  
16 FACILITATING A DEPOSIT OR WITHDRAWAL BY AN AUTHORIZED PARTICIPANT). THE  
17 TERM "SIGNIFICANT VENDOR" SHALL NOT INCLUDE A PROVIDER OF GOODS OR  
18 SERVICES TO A LICENSEE THAT ARE NOT SPECIFICALLY DESIGNED FOR USE AND  
19 NOT PRINCIPALLY USED IN CONNECTION WITH INTERACTIVE GAMING.

20 13. "TEXAS HOLD'EM POKER" MEANS THE TYPE OF POKER MARKETED AS TEXAS  
21 HOLD'EM POKER THAT INVOLVES TWO CARDS BEING DEALT FACE DOWN TO EACH  
22 PLAYER AND THEN FIVE COMMUNITY CARDS BEING PLACED FACE-UP BY THE DEALER,  
23 A SERIES OF THREE THEN TWO ADDITIONAL SINGLE CARDS, WITH PLAYERS HAVING  
24 THE OPTION TO CHECK, BET, RAISE OR FOLD AFTER EACH DEAL.

25 S 1402. AUTHORIZATION. 1. THE COMMISSION SHALL, WITHIN ONE HUNDRED  
26 EIGHTY DAYS OF THE DATE THIS ARTICLE BECOMES LAW, PROMULGATE REGULATIONS  
27 TO IMPLEMENT INTERACTIVE GAMING IN THIS STATE AND SHALL AUTHORIZE UP TO  
28 ELEVEN LICENSES TO OPERATE INTERACTIVE GAMING INVOLVING AUTHORIZED  
29 PARTICIPANTS, SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND OTHER APPLI-  
30 CABLE PROVISIONS OF LAW.

31 2. APPLICANTS ELIGIBLE TO APPLY FOR A LICENSE PURSUANT TO THIS ARTICLE  
32 SHALL BE THOSE ENTITIES:

33 (A) LICENSED BY THE STATE PURSUANT TO SECTION SIXTEEN HUNDRED SEVEN-  
34 TEEN-A OF THE TAX LAW TO OPERATE VIDEO LOTTERY GAMING AND HAS EXPERIENCE  
35 IN THE OPERATION OF INTERACTIVE GAMING BY BEING LICENSED IN A STATE WITH  
36 COMPARABLE LICENSING REQUIREMENTS OR GUARANTEES ACQUISITION OF ADEQUATE  
37 BUSINESS COMPETENCE AND EXPERIENCE IN THE OPERATION OF INTERACTIVE  
38 GAMING; OR

39 (B) LICENSED BY THE STATE TO OPERATE A CLASS III GAMING FACILITY  
40 PURSUANT TO ARTICLE THIRTEEN OF THIS CHAPTER AND HAS EXPERIENCE IN THE  
41 OPERATION OF INTERACTIVE GAMING BY BEING LICENSED IN A STATE WITH COMPA-  
42 RABLE LICENSING REQUIREMENTS OR GUARANTEES ACQUISITION OF ADEQUATE BUSI-  
43 NESS COMPETENCE AND EXPERIENCE IN THE OPERATION OF INTERACTIVE GAMING.

44 3. THE COMMISSION SHALL, TO THE EXTENT PRACTICABLE, ISSUE LICENSES TO  
45 MULTIPLE APPLICANTS NO SOONER THAN ONE HUNDRED EIGHTY DAYS AFTER THE  
46 PROMULGATION OF REGULATIONS IN ORDER TO ENSURE A ROBUST AND COMPETITIVE  
47 MARKET FOR CONSUMERS AND TO PREVENT EARLY LICENSEES FROM GAINING AN  
48 UNFAIR COMPETITIVE ADVANTAGE.

49 4. NO PERSON MAY OPERATE, MANAGE OR MAKE AVAILABLE AN INTERACTIVE  
50 GAMING PLATFORM OR ACT AS A SIGNIFICANT VENDOR WITH RESPECT TO INTERAC-  
51 TIVE GAMING THAT IS OFFERED TO PERSONS LOCATED IN THIS STATE UNLESS  
52 LICENSED BY THE COMMISSION PURSUANT TO THIS ARTICLE AND ONLY THOSE GAMES  
53 AUTHORIZED BY THE COMMISSION SHALL BE PERMITTED.

54 5. LICENSE APPLICANTS MAY FORM A PARTNERSHIP, JOINT VENTURE OR OTHER  
55 CONTRACTUAL ARRANGEMENT IN ORDER TO FACILITATE THE PURPOSES OF THIS  
56 ARTICLE.

1 6. ANY PERSON FOUND SUITABLE BY THE COMMISSION MAY BE ISSUED A LICENSE  
2 AS AN OPERATOR OR SIGNIFICANT VENDOR PURSUANT TO THIS ARTICLE. IN DETER-  
3 MINING SUITABILITY, THE COMMISSION SHALL CONSIDER THOSE FACTORS IT DEEMS  
4 RELEVANT IN ITS DISCRETION, INCLUDING BUT NOT LIMITED TO:

5 (A) WHETHER THE APPLICANT IS A PERSON OF GOOD CHARACTER, HONESTY AND  
6 INTEGRITY;

7 (B) WHETHER THE APPLICANT IS PERSON WHOSE PRIOR ACTIVITIES, CRIMINAL  
8 RECORD, IF ANY, REPUTATION, HABITS AND ASSOCIATIONS DO NOT:

9 (I) POSE A THREAT TO THE PUBLIC INTEREST OR TO THE EFFECTIVE REGU-  
10 LATION AND CONTROL OF INTERACTIVE GAMING; OR

11 (II) CREATE OR ENHANCE THE DANGERS OF UNSUITABLE, UNFAIR OR ILLEGAL  
12 PRACTICES, METHODS AND ACTIVITIES IN THE CONDUCT OF INTERACTIVE GAMING  
13 OR IN THE CARRYING ON OF THE BUSINESS AND FINANCIAL ARRANGEMENTS INCI-  
14 DENTAL TO SUCH GAMING;

15 (C) WHETHER THE APPLICANT IS CAPABLE OF AND LIKELY TO CONDUCT THE  
16 ACTIVITIES FOR WHICH THE APPLICANT IS LICENSED IN ACCORDANCE WITH THE  
17 PROVISIONS OF THIS ARTICLE, ANY REGULATIONS PRESCRIBED UNDER THIS ARTI-  
18 CLE AND ALL OTHER APPLICABLE LAWS;

19 (D) WHETHER THE APPLICANT HAS OR GUARANTEES ACQUISITION OF ADEQUATE  
20 BUSINESS COMPETENCE AND EXPERIENCE IN THE OPERATION OF LICENSED GAMING  
21 OR OF INTERACTIVE GAMING IN THIS STATE OR IN A STATE WITH COMPARABLE  
22 LICENSING REQUIREMENTS; AND

23 (E) WHETHER THE APPLICANT HAS OR WILL OBTAIN SUFFICIENT FINANCING FOR  
24 THE NATURE OF THE PROPOSED OPERATION AND FROM A SUITABLE SOURCE.

25 7. THE COMMISSION FURTHER SHALL DEVELOP STANDARDS BY WHICH TO EVALUATE  
26 AND APPROVE INTERACTIVE GAMING PLATFORMS FOR USE WITH INTERACTIVE  
27 GAMING. INTERACTIVE GAMING PLATFORMS MUST BE APPROVED BY THE COMMISSION  
28 BEFORE BEING USED BY A LICENSEE OR SIGNIFICANT VENDOR TO CONDUCT INTER-  
29 ACTIVE GAMING IN THIS STATE.

30 8. THE COMMISSION SHALL REQUIRE ALL LICENSEES TO PAY A ONE-TIME FEE OF  
31 TEN MILLION DOLLARS. SUCH FEE PAID BY EACH LICENSEE SHALL BE APPLIED TO  
32 SATISFY, IN WHOLE OR IN PART, AS APPLICABLE, THAT LICENSEE'S TAX OBLI-  
33 GATION PURSUANT TO SECTION FOURTEEN HUNDRED FIVE OF THIS ARTICLE IN  
34 SIXTY EQUAL MONTHLY INSTALLMENTS, ALLOCATED TO EACH OF THE FIRST SIXTY  
35 MONTHS OF TAX OWED AFTER THE LICENSEE HAS BEGUN OPERATING INTERACTIVE  
36 GAMING PURSUANT TO THIS ARTICLE. NO AMOUNTS NOT REQUIRED TO BE USED TO  
37 SATISFY SUCH TAX OBLIGATION DURING THAT PERIOD SHALL BE ALLOCATED TO  
38 PAYMENT OF SUCH TAX OBLIGATION AFTER THAT PERIOD.

39 9. LICENSES ISSUED BY THE COMMISSION SHALL REMAIN IN EFFECT FOR TEN  
40 YEARS.

41 10. THE COMMISSION, BY REGULATION, MAY AUTHORIZE AND PROMULGATE ANY  
42 RULES NECESSARY TO IMPLEMENT AGREEMENTS WITH OTHER STATES, OR AUTHORIZED  
43 AGENCIES THEREOF (A) TO ENABLE PATRONS IN THOSE STATES TO PARTICIPATE IN  
44 INTERACTIVE GAMING OFFERED BY LICENSEES UNDER THIS ARTICLE OR (B) TO  
45 ENABLE PATRONS IN THIS STATE TO PARTICIPATE IN INTERACTIVE GAMING  
46 OFFERED BY LICENSEES UNDER THE LAWS OF THOSE OTHER STATES, PROVIDED THAT  
47 SUCH OTHER STATE OR AUTHORIZED AGENCY APPLIES SUITABILITY STANDARDS AND  
48 REVIEW MATERIALLY CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

49 11. ANY REGULATIONS ADOPTED PURSUANT TO SUBDIVISION TEN OF THIS  
50 SECTION MUST SET FORTH PROVISIONS THAT ADDRESS:

51 (A) ANY ARRANGEMENTS TO SHARE REVENUE BETWEEN NEW YORK AND ANY OTHER  
52 STATE OR AGENCY WITHIN ANOTHER STATE; AND

53 (B) ARRANGEMENTS TO ENSURE THE INTEGRITY OF INTERACTIVE GAMING OFFERED  
54 PURSUANT TO ANY SUCH AGREEMENT AND THE PROTECTION OF PATRONS LOCATED IN  
55 THIS STATE.

1 12. THE COMMISSION MAY DELEGATE ITS RESPONSIBILITIES TO ADMINISTER THE  
2 PROVISIONS OF THIS ARTICLE TO THE DIVISION, AS IT SEES FIT, EXCEPT FOR  
3 ITS RESPONSIBILITIES TO APPROVE LICENSES.

4 S 1403. REQUIRED SAFEGUARDS/MINIMUM STANDARDS. THE COMMISSION SHALL  
5 REQUIRE LICENSEES TO IMPLEMENT MEASURES TO MEET THE STANDARDS SET OUT IN  
6 THIS SECTION, ALONG WITH SUCH OTHER STANDARDS THAT THE COMMISSION IN ITS  
7 DISCRETION MAY CHOOSE TO REQUIRE.

8 (A) APPROPRIATE SAFEGUARDS TO ENSURE, TO A REASONABLE DEGREE OF  
9 CERTAINTY, THAT PARTICIPANTS IN INTERACTIVE GAMING ARE NOT YOUNGER THAN  
10 TWENTY-ONE YEARS OF AGE.

11 (B) APPROPRIATE SAFEGUARDS TO ENSURE, TO A REASONABLE DEGREE OF  
12 CERTAINTY, THAT PARTICIPANTS IN INTERACTIVE GAMING ARE PHYSICALLY  
13 LOCATED WITHIN THE STATE OR SUCH OTHER JURISDICTION THAT THE COMMISSION  
14 HAS DETERMINED TO BE PERMISSIBLE.

15 (C) APPROPRIATE SAFEGUARDS TO PROTECT, TO A REASONABLE DEGREE OF  
16 CERTAINTY, THE PRIVACY AND ONLINE SECURITY OF PARTICIPANTS IN INTERAC-  
17 TIVE GAMING.

18 (D) APPROPRIATE SAFEGUARDS TO ENSURE, TO A REASONABLE DEGREE OF  
19 CERTAINTY, THAT THE INTERACTIVE GAMING IS FAIR AND HONEST AND THAT  
20 APPROPRIATE MEASURES ARE IN PLACE TO DETER, DETECT AND, TO THE EXTENT  
21 REASONABLY POSSIBLE, TO PREVENT CHEATING, INCLUDING COLLUSION, AND USE  
22 OF CHEATING DEVICES, INCLUDING USE OF SOFTWARE PROGRAMS (SOMETIMES  
23 REFERRED TO AS "BOTS") THAT MAKE BETS OR WAGERS ACCORDING TO ALGORITHMS.

24 (E) APPROPRIATE SAFEGUARDS TO MINIMIZE COMPULSIVE GAMING AND TO  
25 PROVIDE NOTICE TO PARTICIPANTS OF RESOURCES TO HELP PROBLEM GAMBLERS.

26 (F) APPROPRIATE SAFEGUARDS TO ENSURE PARTICIPANTS' FUNDS ARE HELD IN  
27 ACCOUNTS SEGREGATED FROM THE FUNDS OF LICENSEES AND OTHERWISE ARE  
28 PROTECTED FROM CORPORATE INSOLVENCY, FINANCIAL RISK OR CRIMINAL OR CIVIL  
29 ACTIONS AGAINST THE LICENSEE.

30 S 1404. SCOPE OF LICENSING REVIEW. 1. IN CONNECTION WITH ANY LICENSE  
31 ISSUED PURSUANT TO THIS ARTICLE, THE LICENSEE, SIGNIFICANT VENDOR OR  
32 APPLICANT SHALL IDENTIFY AND THE COMMISSION SHALL REVIEW THE SUITABILITY  
33 OF SUCH LICENSEE'S, SIGNIFICANT VENDOR'S OR APPLICANT'S OWNER, CHIEF  
34 EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER AND ANY OTHER OFFICER OR  
35 EMPLOYEE WHO THE COMMISSION DEEMS IS SIGNIFICANTLY INVOLVED IN THE  
36 MANAGEMENT OR CONTROL OF THE LICENSEE, SIGNIFICANT VENDOR OR APPLICANT  
37 OR OF THE INTERACTIVE GAMING PLATFORM. "OWNER" FOR PURPOSES OF THIS  
38 PROVISION MEANS ANY PERSON WHO DIRECTLY OR INDIRECTLY HOLDS ANY BENEFI-  
39 CIAL OR OWNERSHIP INTEREST IN THE APPLICANT OF FIVE PERCENT OR GREATER  
40 OR ANY AMOUNT OF OWNERSHIP THAT THE COMMISSION DETERMINES TO BE SIGNIF-  
41 ICANT OWNERSHIP OF THE LICENSEE, SIGNIFICANT VENDOR, OR APPLICANT.

42 2. INSTITUTIONAL INVESTORS ARE SUBJECT TO THE PROVISIONS SET OUT IN  
43 THIS SECTION.

44 (A) AN INSTITUTIONAL INVESTOR HOLDING UNDER TWENTY-FIVE PERCENT OF THE  
45 EQUITY SECURITIES OF A LICENSEE'S OR SIGNIFICANT VENDOR'S (OR APPLI-  
46 CANT'S) HOLDING OR INTERMEDIARY COMPANIES, SHALL BE GRANTED A WAIVER OF  
47 ANY INVESTIGATION OF SUITABILITY OR OTHER REQUIREMENT IF SUCH SECURITIES  
48 ARE THOSE OF A CORPORATION, WHETHER PUBLICLY TRADED OR PRIVATELY HELD,  
49 AND ITS HOLDINGS OF SUCH SECURITIES WERE PURCHASED FOR INVESTMENT  
50 PURPOSES ONLY AND IT FILES A CERTIFIED STATEMENT TO THE EFFECT THAT IT  
51 HAS NO INTENTION OF INFLUENCING OR AFFECTING THE AFFAIRS OF THE ISSUER,  
52 THE LICENSEE (OR SIGNIFICANT VENDOR OR APPLICANT, AS APPLICABLE) OR ITS  
53 HOLDING OR INTERMEDIARY COMPANIES; PROVIDED, HOWEVER, THAT IT SHALL BE  
54 PERMITTED TO VOTE ON MATTERS PUT TO THE VOTE OF THE OUTSTANDING SECURITY  
55 HOLDERS. THE COMMISSION MAY GRANT SUCH A WAIVER TO AN INSTITUTIONAL  
56 INVESTOR HOLDING A HIGHER PERCENTAGE OF SUCH SECURITIES UPON A SHOWING

1 OF GOOD CAUSE AND IF THE CONDITIONS SPECIFIED ABOVE ARE MET. ANY INSTI-  
2 TUTIONAL INVESTOR GRANTED A WAIVER UNDER THIS PARAGRAPH WHICH SUBSE-  
3 QUENTLY DETERMINES TO INFLUENCE OR AFFECT THE AFFAIRS OF THE ISSUER  
4 SHALL PROVIDE NOT LESS THAN THIRTY DAYS' NOTICE OF SUCH INTENT AND SHALL  
5 FILE WITH THE COMMISSION A REQUEST FOR DETERMINATION OF SUITABILITY  
6 BEFORE TAKING ANY ACTION THAT MAY INFLUENCE OR AFFECT THE AFFAIRS OF THE  
7 ISSUER; PROVIDED, HOWEVER, THAT IT SHALL BE PERMITTED TO VOTE ON MATTERS  
8 PUT TO THE VOTE OF THE OUTSTANDING SECURITY HOLDERS. IF AN INSTITUTIONAL  
9 INVESTOR CHANGES ITS INVESTMENT INTENT, OR IF THE COMMISSION FINDS  
10 REASONABLE CAUSE TO BELIEVE THAT THE INSTITUTIONAL INVESTOR MAY BE FOUND  
11 UNSUITABLE, NO ACTION OTHER THAN DIVESTITURE SHALL BE TAKEN BY SUCH  
12 INVESTOR WITH RESPECT TO ITS SECURITY HOLDINGS UNTIL THERE HAS BEEN  
13 COMPLIANCE WITH ANY REQUIREMENTS ESTABLISHED BY THE COMMISSION, WHICH  
14 MAY INCLUDE THE EXECUTION OF A TRUST AGREEMENT. THE LICENSEE (OR SIGNIF-  
15 ICANT VENDOR OR APPLICANT, AS APPLICABLE) AND ITS RELEVANT HOLDING,  
16 INTERMEDIARY OR SUBSIDIARY COMPANY SHALL NOTIFY THE COMMISSION IMME-  
17 DIATELY OF ANY INFORMATION ABOUT, OR ACTIONS OF, AN INSTITUTIONAL INVE-  
18 TOR HOLDING ITS EQUITY SECURITIES WHERE SUCH INFORMATION OR ACTION MAY  
19 IMPACT UPON THE ELIGIBILITY OF SUCH INSTITUTIONAL INVESTOR FOR A WAIVER  
20 PURSUANT TO THIS PARAGRAPH.

21 (B) IF AT ANY TIME THE COMMISSION FINDS THAT AN INSTITUTIONAL INVESTOR  
22 HOLDING ANY SECURITY OF A HOLDING OR INTERMEDIARY COMPANY OF A LICENSEE  
23 OR SIGNIFICANT VENDOR OR APPLICANT, OR, WHERE RELEVANT, OF ANOTHER  
24 SUBSIDIARY COMPANY OF A HOLDING OR INTERMEDIARY COMPANY OF A LICENSEE OR  
25 SIGNIFICANT VENDOR OR APPLICANT WHICH IS RELATED IN ANY WAY TO THE  
26 FINANCING OF THE LICENSEE OR SIGNIFICANT VENDOR OR APPLICANT, FAILS TO  
27 COMPLY WITH THE TERMS OF PARAGRAPH (A) OF THIS SECTION, OR IF AT ANY  
28 TIME THE COMMISSION FINDS THAT, BY REASON OF THE EXTENT OR NATURE OF ITS  
29 HOLDINGS, AN INSTITUTIONAL INVESTOR IS IN A POSITION TO EXERCISE SUCH A  
30 SUBSTANTIAL IMPACT UPON THE CONTROLLING INTERESTS OF A LICENSEE OR  
31 SIGNIFICANT VENDOR OR APPLICANT THAT INVESTIGATION AND DETERMINATION OF  
32 SUITABILITY OF THE INSTITUTIONAL INVESTOR IS NECESSARY TO PROTECT THE  
33 PUBLIC INTEREST, THE COMMISSION MAY TAKE ANY NECESSARY ACTION OTHERWISE  
34 AUTHORIZED UNDER THIS ARTICLE TO PROTECT THE PUBLIC INTEREST.

35 (C) FOR PURPOSES OF THIS SECTION, AN "INSTITUTIONAL INVESTOR" SHALL  
36 MEAN ANY RETIREMENT FUND ADMINISTERED BY A PUBLIC AGENCY FOR THE EXCLU-  
37 SIVE BENEFIT OF FEDERAL, STATE, OR LOCAL PUBLIC EMPLOYEES; INVESTMENT  
38 COMPANY REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S  
39 80A-1 ET SEQ.); COLLECTIVE INVESTMENT TRUST ORGANIZED BY BANKS UNDER  
40 PART NINE OF THE RULES OF THE COMPTROLLER OF THE CURRENCY; CLOSED END  
41 INVESTMENT TRUST; CHARTERED OR LICENSED LIFE INSURANCE COMPANY OR PROP-  
42 erty AND CASUALTY INSURANCE COMPANY; BANKING AND OTHER CHARTERED OR  
43 LICENSED LENDING INSTITUTION; INVESTMENT ADVISOR REGISTERED UNDER THE  
44 INVESTMENT ADVISORS ACT OF 1940 (15 U.S.C. S 80B-1 ET SEQ.); AND SUCH  
45 OTHER PERSONS AS THE COMMISSION MAY DETERMINE FOR REASONS CONSISTENT  
46 WITH THE PUBLIC INTEREST.

47 S 1405. STATE TAX. LICENSEES ENGAGED IN THE BUSINESS OF CONDUCTING  
48 INTERACTIVE GAMING PURSUANT TO THIS ARTICLE SHALL PAY A PRIVILEGE TAX  
49 BASED ON THE LICENSEE'S INTERACTIVE GAMING GROSS REVENUE AT A FIFTEEN  
50 PERCENT RATE.

51 S 2. Subdivision 1 of section 225.00 of the penal law is amended to  
52 read as follows:

53 1. "Contest of chance" means any contest, game, gaming scheme or  
54 gaming device in which the outcome depends [in a material degree]  
55 PREDOMINANTLY upon an element of chance, notwithstanding that skill of  
56 the contestants may also be a factor therein.

1 S 3. The penal law is amended by adding a new section 225.36 to read  
2 as follows:

3 S 225.36 INTERACTIVE GAMING OFFENSES AND EXCEPTIONS.

4 1. THE KNOWING AND WILLFUL OFFERING OF UNLICENSED INTERACTIVE GAMING  
5 TO PERSONS IN THIS STATE, OR THE KNOWING AND WILLFUL PROVISION OF  
6 SERVICES WITH RESPECT THERETO, SHALL CONSTITUTE A GAMBLING OFFENSE UNDER  
7 THIS ARTICLE.

8 2. LICENSED INTERACTIVE GAMING ACTIVITIES UNDER SECTION FOURTEEN  
9 HUNDRED TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW SHALL  
10 NOT BE A GAMBLING OFFENSE UNDER THIS ARTICLE.

11 3. A PERSON OFFERING UNLICENSED INTERACTIVE GAMING TO PERSONS IN THIS  
12 STATE SHALL BE LIABLE FOR ALL TAXES SET FORTH IN SECTION FOURTEEN  
13 HUNDRED FIVE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW IN THE  
14 SAME MANNER AND AMOUNTS AS IF SUCH PERSON WERE A LICENSEE. TIMELY  
15 PAYMENT OF SUCH TAXES SHALL NOT CONSTITUTE A DEFENSE TO ANY PROSECUTION  
16 OR OTHER PROCEEDING IN CONNECTION WITH THE INTERACTIVE GAMING EXCEPT FOR  
17 A PROSECUTION OR PROCEEDING ALLEGING FAILURE TO MAKE SUCH PAYMENT.

18 S 4. Severability clause. If any provision of this act or application  
19 thereof shall for any reason be adjudged by any court of competent  
20 jurisdiction to be invalid, such judgment shall not affect, impair, or  
21 invalidate the remainder of the act, but shall be confined in its opera-  
22 tion to the provision thereof directly involved in the controversy in  
23 which the judgment shall have been rendered.

24 S 5. This act shall take effect on the one hundred eightieth day after  
25 it shall have become a law.